IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 158 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARANBHAI PARBATBHAI MORI
Versus
JAGMALBHAI MERAMANBHAI PADHIYAR

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Appearance :
MR AMAR D.MITHANI for the petitioner
MR PS CHAMPANERI for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 17/11/2005

ORAL JUDGMENT

1. Petitioner – original plaintiff/respondent is before this Court being aggrieved of an order passed on 14.06.2005 passed by Deputy Collector, Veraval in Revision Application No.1 of 2005. It is prayed by the petitioner that the judgment and order dated 04.12.2004 passed by the Mamlatdar, Kodinar in Mamlatdar's Court Case No.4 of 2004 be restored.

2. Mr.Amar D.Mithani, the learned advocate for the

petitioner assailed the order of the Deputy Collector on the ground that in the order, it is not mentioned that the order of the Mamlatdar is 'illegal' or 'perverse'.

Only because the Deputy Collector has not used those two words, i.e. illegal or perverse, the order of the Deputy Collector does not become bad in law. The learned advocate further submitted that the Deputy Collector was in the role of a revisional authority and as a revisional authority, he could not have interfered with the findings of fact recorded by the Mamlatdar.

The submission made by the learned advocate is good as a general rule, but then when the findings recorded by the Court/authority are manifestly perverse or unreasonable, revisional authority can interfere with the same and pass appropriate order.

3. The learned advocate Mr.Mithani next contended that the Deputy Collector has not considered the evidence on the record of the case. He submitted that as many as 7 persons were examined and evidence is on record, but the Deputy Collector has not considered the same. Only because the deposition is not mentioned by name, it cannot be said that the same is not considered. Such

absence of discussion by name will not render the order of the Deputy Collector 'bad in law'.

4. The learned advocate Mr.Mithani also submitted that the order of the Deputy Collector is self-contradictory inasmuch as on an earlier occasion in a matter between the same parties, the Deputy Collector had held that there was a passage (way) between Survey No.227 and 228 on the one hand and Survey No.217 on the other.

The learned advocate invited the attention of the Court to the order which is produced at Annexure-I to this application.

Having perused the same, the Court did not find any self-contradictory findings recorded by the Deputy Collector.

5. Mr.Mithani, the learned advocate for the petitioner could not dislodge an important fact that Survey No.217 was purchased by the present petitioner under a registered sale deed dated 29.02.1968, wherein the land bearing survey No.217 is described by its boundaries and in that description, no passage (way) is shown on the northern boundary of survey No.217. In fact, it is

mentioned in the said sale deed that the land bearing survey No.227 and 228 is situated to the north of survey No.217. The learned advocate submitted that only because there is no mention about the passage or way in a registered sale deed, the case of the petitioner cannot be disbelieved.

6. The submission of the learned advocate Mr.Mithani is acceptable as it is without any legal basis. An existence of a passage (way) on the northern side of survey No.217 must have found a mention in the registered sale deed, if it existed. The fact that there is no mention of any such passage (way) in the registered sale deed, must lead to an inevitable conclusion that there existed no passage (way) on northern side of survey No.217.

7. Mr.Mithani, the learned advocate for the petitioner relied upon the following decisions:

(I)**BABAJI KONDAJI MALI AND OTHERS VS. BALA FAKIRA MAHAR AND OTHERS**, reported in AIR 1938 Bombay 159.

(II)**SYED MAHABOOB RAJU VS. HABIBSHA GARIBSHA**, reported in BLR 1967 252.

(III)**JAGANNATH DEOKARAN MARWADI VS. DHONDU ANANDA KUNBI**, reported in BLR 1923 265.

In the considered opinion of this Court, the same have no application to the facts of the present case.

8. The Deputy Collector has considered the entire matter by focusing his attention to the specific issues raised in his judgment and order. Issue No.1 raised by and considered by the Deputy Collector is that, 'whether the disputed road (passage) was in existence since time immemorial'. The same is answered in negative.

9. Issue No.2 to which the Deputy Collector has focused his attention is, 'whether the disputed passage (way) is a public way or not'. The Deputy Collector having found that it is not a public way, has held that under Section 5(2) of the Mamlatdar's Courts Act, the Mamlatdar had no authority/jurisdiction to entertain the dispute raised by the petitioner.

10. In the considered opinion of this Court when the plaintiff/petitioner is not able to prove that the disputed way/passage was a public way, in view of the provision of Sub-section 2 of Section 5 of the Mamlatdar's Courts Act, the Mamlatdar could not have entertained the dispute raised by the

plaintiff/petitioner. The Deputy Collector has rightly quashed the order passed by the Mamlatdar.

11. In the result, this Civil Revision Application fails and the same is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

12. Mr.Amar D.Mithani, the learned advocate for the petitioner requested to extend the interim relief granted by this Court. This Court having found no substance in the matter, does not deem it fit to extend the interim relief. The request is rejected.

(RAVI R.TRIPATHI, J.)

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